

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

STEVEN LOPEZ, Plaintiff, v. SMELOSKY, et al. Defendants. } Civil No. 08cv1648 } ORDER ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION, OVERRULING PLAINTIFF'S OBJECTIONS AND GRANTING PLAINTIFF SIXTY DAYS TO FILE AN AMENDED COMPLAINT

On September 8, 2008, plaintiff filed a complaint for relief under 42 U.S.C §1983 based on allegations that defendants knew another inmate planned to injure plaintiff but did not take action to prevent plaintiff's injury. Defendants filed a motion to dismiss plaintiff's complaint for failure to exhaust administrative remedies on January 23, 2009. Plaintiff did not file an opposition. Magistrate Judge Cathy Bencivengo issued an report and recommendation ("report") recommending this Court grant defendant's motion to dismiss based on plaintiff's failure to exhaust administrative remedies. Plaintiff filed an objection to the R&R which objected to the magistrate judge's determination that there are no facts in dispute in this matter and requests "that the complaint be Granted to the court to resolve this dispute and give justice to this matter, and/or grant an evidentiary hearing to view and decide on the disputed facts (sic)." Doc. 23 at 2. In the alternative, plaintiff requests an emergency extension of time pursuant to Federal Rule of Civil Procedure 6(b) to file an opposition to defendant's motion

1 to dismiss and leave to file an amended complaint. Id. at 6. Defendants' reply states they do
2 not object to plaintiff's request for an extension of time.

3 This Court finds that the report provides a cogent analysis of the issues presented in the
4 plaintiff's complaint and agrees with the findings of the Magistrate Judge's report. Accordingly,
5 this Court OVERRULES plaintiff's objections, ADOPTS the magistrate judge's report in its
6 entirety, and DISMISSES plaintiff's complaint WITHOUT PREJUDICE. Plaintiff may file an
7 amended complaint on or before November 17, 2009.

8 IT IS SO ORDERED.

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10 DATED: September 22, 2009


11 JOHN A. HOUSTON
12 United States District Judge

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